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TO RUEHC/SECSTATE WASHDC 0153
INFO RUCPDO/DEPT OF COMMERCE WASHDC
RUEATRS/DEPT OF TREASURY WASH DC

UNCLAS NAIROBI 002353

SIPDIS

STATE ALSO FOR AF/E, AF/EPS, EB/OIA HEATHER GOETHERT, AND L/CID SAM
MCDONALD

USDOC FOR 3131/USFCS/OIO/RD/ANESA

TREASURY FOR VIRGINIA BRANDON

SIPDIS

SENSITIVE

E.O. 12958: N/A

TAGS: [EINV](#) [KIDE](#) [OPIC](#) [CASC](#) [PGOV](#) [KE](#)

SUBJECT: 2007 REPORT ON INVESTMENT DISPUTES AND EXPROPRIATION CLAIMS
- KENYA

REFS: (A) STATE 55422 (B) 05 NAIROBI 3255

SENSITIVE BUT UNCLASSIFIED.

CONTAINS BUSINESS PROPRIETARY INFORMATION. NOT FOR RELEASE OUTSIDE
USG CHANNELS. PLEASE PROTECT ACCORDINGLY.

¶1. (U) The U.S. Mission in Kenya is aware of one (1) outstanding
claim of a United States business interest against a branch of the
Government of Kenya (GOK).

¶2. (U) Background: In December 1995, Claimant A entered into a
joint venture with a Kenyan public university ("the university"),
via a Memorandum of Agreement (MOA), to establish computer
instruction centers. This partnership sought to impart computer
skills to Kenyan students and over the years expanded to several
centers across the country, using U.S. expertise, intellectual
property, and technology supplied by Claimant A to staff and run the
curriculum.

¶3. (SBU) The partnership run successfully for seven years when, in
June 2003, the university, citing management irregularities,
unilaterally took over the entire enterprise. Whilst Claimant A and
the university agreed in principle to proceed to arbitration, as
provided for by the MOA that established the partnership, the
arbitration process has yet to commence, despite the significant
efforts that U.S. Embassy Kenya officers, including the previous
U.S. Ambassador (ref B) and several Congressmen and Senators have
expended in pursuit of a satisfactory resolution since the
management takeover.

¶4. (SBU) At the time of the university takeover, Claimant A
contends it had invested approximately Kshs. 35 million (USD
500,000), but had only recouped about 50% of this amount.
Furthermore, Claimant A estimates a loss of investment in excess of
\$5 million when projected revenues are considered and also estimates
that the university is currently collecting in excess of Kenyan
shillings 100 million (USD 1.43 million) annually from the IT
Learning Center, based at its campus in Juja Town, and from 16 other
accreditation centers in Nairobi. Finally, according to Claimant A,
the university has also set into motion plans to develop a
technology park, a project concept that had been envisioned for
implementation at some later phase within the spirit of the joint
MOA. Claimant A asserts that the university needs to reverse its
suspension of the MOA or provide financial compensation.

¶5. (SBU) U.S. Mission Actions on Behalf of U.S. Claimant: In June

2003 Claimant A formally sought U.S. Embassy Nairobi intervention in its dispute with the Kenyan university, citing a unilateral breach of the parties' MOA. Subsequently, embassy officials contacted GOK counterparts on Claimant A's behalf and persuaded the university to submit the case to arbitration, as agreed in the MOA. The embassy has also signaled to the GOK the desirability of an early and, if possible, amicable settlement of this dispute on many occasions. To date, Claimant A has refused to engage local counsel and pursue this case in the Kenyan legal system. It has also refused to accept the university's offer of arbitration under the MOA's terms.

¶6. (SBU) As part of a March 20, 2007 conference call, Claimant A's president requested that U.S. Ambassador to Kenya Michael Ranneberger intervene in the matter. His company's local representative also participated in the conference call. In response, on April 24, 2007, Ambassador Ranneberger wrote to Kenyan Minister of Education, Dr. George Saitoti, requesting the reinstatement of the MOA by the Kenyan university. A copy of this letter was also sent to Minister of Internal Security John Michuki, a personal acquaintance of Claimant A's president. Claimant A's president believes Security Minister Michuki can assist in facilitating a decision that would bring both parties closer to a negotiated resolution. U.S. Embassy FCS officers have followed up with contacts in both the Education and Internal Security ministries but have yet to receive a concrete reply to the Ambassador's letter. (U.S. Embassy officers have met and corresponded with Claimant A's local representative on several occasion).

¶7. (SBU) Claimant's Name:

Claimant A: Nebraska-based Micro-Mini Systems (MMS)

University: Jomo Kenyatta University of Agriculture and Technology (JKUAT)

¶8. (U) Primary U.S. Mission contacts:

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(Please note, Mr. Yagi will soon depart post and will be replaced by Jim Sullivan.)

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Ranneberger